

ST 01-7

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

v.

ABC FOODS, INC.

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) Mimi Brin
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

This matter comes on for hearing pursuant to the Illinois Department of Revenue's ("Department") denial of ABC Foods, Inc.'s ("ABC" or "Taxpayer") request for the abatement of quarter monthly late payment penalties, 00 00000000000000 and 00 00000000000000 assessed against it for 4/2000 and 3/2000, respectively. Mrs. Jane Doe and Mr. John Doe appeared on behalf of the taxpayer. At issue is whether reasonable cause exists to abate the penalties assessed. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department denied taxpayer's request for the abatement of penalty assessed for the late payment of taxpayer's quarter monthly Sales and Use

Tax obligation for payment 2, 3/00, which was due by 3/15/00, and which was postmarked as mailed 3/16. Department Exs. No. 2, 4 (p. 2);

2. The Department denied taxpayer's request for the abatement of penalty assessed for the late payment of taxpayer's quarter monthly Sales and Use Tax obligation for payment 4, 4/200, which was due by 5/1, and which was postmarked 5/4. Department Exs. No. 1, 4 (p. 1)
3. Taxpayer concedes the additional \$40.00 tax shown as due for 3/00 (Tr. p. 14) and concedes the additional \$9.00 tax shown as due for 4/00 (Tr. p. 14). Department Exs. No. 1, 2
4. The Department abated two, consecutive late payment penalties for 4/99 and 5/99, as it was at that time that taxpayer began as a quarter monthly filer. Tr. pp. 27-31, 38-40; Department Ex. No. 3

Conclusions of Law:

Taxpayer was required, during March and April, 2000, to file quarter monthly Sales and Use Tax returns with the Department, and to make the required payments pursuant to those returns on or before dates certain during each month. 35 ILCS 120/3 The Department provided taxpayer with forms for each such return and payment, with each form showing on its face the date by which it was due. Department Ex. No.

The Uniform Penalty and Interest Act (35 ILCS 735/3-1 *et seq.*) allows for the abatement of penalties assessed for the late filing or payment of these taxes if reasonable cause exists. *Id.* at 735/3-8 Department regulations address reasonable cause abatement, in pertinent part, as follows:

- b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account

all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.

c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. ...

d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. ...

86 Ill. Admin. Code section 700.400 (b) (c) (d)

The Department's auditor testified that, according to Department records, the taxpayer had only two incidents of late payment of these taxes prior to the instant matters. Tr. pp. 38-9 Those were for two consecutive payments due in April and May, 1999, at which time, taxpayer was a new quarter monthly filer, having been a monthly filer throughout its seven year filing history. Id. The Department abated the penalties assessed for late payment in those two instances.

In explanation for the late payment in the instant matters, Mrs. Doe, who is responsible for the filing and payment of these taxes, testified that she mailed payment timely, despite the post-mark on the envelopes. She explained that her normal procedure is to write all necessary business checks on Monday and mail them on the date indicated on the check. Tr. pp. 20-21 She further testified that each check is computer generated, with the date automatically being placed there by the computer at the time the check is produced. Id. The check due to the Department 3/15 is dated 3/14. Taxpayer Ex. No. 2 The witness could not explain why the post-mark on the envelope for this mailing is 3/16.

Nor could she explain why the check due 5/1 is dated 4/25, yet the post-mark on its envelope is 5/4.

An examination of the calendar for March, April and May, 2000 finds that 3/14 fell on a Tuesday, with there being no Federal or state holidays occurring on 3/14 or 3/15. This same examination discloses that 4/25 was again a Tuesday, with no Federal or state holidays occurring between then and 5/1, when the return and payment were due.

Mrs. Doe expressed her approval that taxpayer was now, once again, a monthly tax filer. While it is more difficult attending to this filing four times per month as opposed to once, quarter monthly filing is a statutory requirement for which there is no option. Whereas reasonable cause might have been appropriate at the onset of taxpayer's new filing status so that taxpayer could acclimate to the quarter monthly payment system, reasonable cause no longer exists one year later, particularly when the due dates are clearly evident on the face of the forms. Taxpayer offered no other explanations for its failure to timely file and pay the quarter monthly payments at issue.

WHEREFORE, for the reasons stated above, it is my recommendation that the penalties assessed herein not be abated for reasonable cause.

2/28/01

Mimi Brin
Administrative Law Judge